

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :
CORPORATION,

Adv. Pro. No.

: 08-01789(SMB)

Plaintiff-Applicant,

: SIPA LIQUIDATION

v.

: (Substantively
Consolidated)

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

:

Defendant.

:

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In Re:

:

BERNARD L. MADOFF,

:

Debtor.

:

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IRVING H. PICARD, Trustee :
for the Liquidation of :
Bernard L. Madoff Investment :
Securities LLC,

Adv. Pro. No.

: 10-04995(SMB)

Plaintiff,

:

v.

:

TRUST U/ART FOURTH O/W/O ISRAEL
WILENITZ, EVELYN BEREZIN :
WILENITZ, individually, and as :
Trustee and Beneficiary of the :
Trust U/ART FOURTH O/W/O ISRAEL
WILENITZ and SARA SEIMS, as :
Trustee of the Trust U/Art :
Fourth O/W/O Israel Wilenitz,

:

Defendants.

:

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CONFERENCE

Monday, November 19, 2018

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TRANSCRIPT OF PROCEEDINGS as
reported by NANCY C. BENDISH, Certified Court
Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at JAMS
offices, 620 Eighth Avenue, 34th Floor, New
York, New York on Monday, November 19, 2018,
commencing at 10:23 a.m.

BEFORE:

HON. FRANK MAAS (RET.), Arbitrator
fmaas@jamsadr.com
JAMS
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New York, New York 10018

APPEARANCES:

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For the Defendants

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JUDGE MAAS: Good morning,
everyone. We're here for Ms. Chaitman's motion
seeking to compel the Trustee to share access to
the entire database that the Trustee has
assembled. So the floor is yours, Ms. Chaitman.

MS. CHAITMAN: Your Honor, as I
laid out in our submission, we have been trying
for over two years to get access to all the
trading records, and we have not been able to do
so. These records are absolutely essential for
us to prove the defense that in fact Madoff was
purchasing securities. And we have already
established that we can prove it with respect to
some, but without a complete set of the trading
records it's impossible to do it.

So, what we really need is all the
trading records going back as far as they have
them. And just to be absolutely clear, we're
talking about third-party documents; we're not
talking about Madoff-generated documents. These
are documents bearing the letterhead of Bank of
New York Mellon, JPMorgan Chase, Fidelity,
Lehman Brothers, Bear Stearns et cetera. So
these are documents whose authenticity
presumably cannot be questioned.

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JUDGE MAAS: I thought one of the
problems you faced with third-party documents is
that they would only go back six years, and you
were looking for records that went back further.
My impression was that you were more interested
in the opposite, the Madoff Securities records.
But I understand that that's not what you're
seeking.

MS. CHAITMAN: No. And even if we
can only go back six years, Your Honor, and I
think that that's -- the Trustee served
subpoenas on all the institutions that did
business with Madoff, as I understand it. And
obviously he did that presumably in 2009. So if
it went back six years, it would be to 2002 or
'3. It's possible that Madoff kept records
earlier than that. In other words, he might
have had people who just microfilmed records
from an earlier period.

So, I'm not interested in any
records other than third-party trading records.
But we haven't been able to get them. I mean,
to take just one example, BNY Mellon, there are
certain statements but only for the year 2008, I
believe 2007 and '8, in the e-data room and

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there's no indication that the earliest
statement we have was the first statement.

So, at one point within the last
six months the Trustee had offered all defense
counsel access to the BLMIS database, which
seemed to me the easiest and least burdensome
way for the Trustee to comply with this request.
I don't know how anything in that database can
be privileged from the Trustee's perspective.
But if there's some way to segregate the trading
records, that would be fine. It's just that the
Trustee hasn't done that.

What the Trustee has done is given
me specific limited productions, which don't
really resolve the problem. I need to have
access to a database of all of the third-party
records.

MR. SHIFRIN: Your Honor, so
there's a lot I can say in response to that. I
think the first thing I think is worth
emphasizing is that there is a history to this
dispute.

JUDGE MAAS: Some of which I'm
part of.

MR. SHIFRIN: Yes, exactly. And

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1 JUDGE MAAS: He testified, I
2 thought I read someplace, that he bought -- I'm
3 hesitating because I want to say six billion.

4 MS. CHAITMAN: He did. That's
5 what he testified, that he maintained a
6 portfolio of six billion. It was a billion and
7 a half at four institutions. But what I'm
8 saying is since his testimony I have actually
9 found records of T-bills that were purchased at
10 Bank of New York Mellon, which he hadn't
11 mentioned.

12 JUDGE MAAS: Presumably you have
13 those records.

14 MS. CHAITMAN: I just have them
15 for 2008.

16 MR. CREMONA: Your Honor, I think
17 it's important to correct the record.
18 Respectfully, that's speculation and unsupported
19 conjecture. It's our position that no trades
20 were made on behalf of IA customers.

21 JUDGE MAAS: I understand the
22 dispute and I understand that Ms. Chaitman's
23 position either at the omnibus hearing or
24 individual trials will be that any trading that
25 occurred had to be for the benefit of a

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1 across ESI and we're searching for trading
2 records, I think the documents that contain the
3 account numbers are the ones that are actually
4 going to be a third-party record because a
5 third-party record is going to contain the
6 account information, right?

7 JUDGE MAAS: Right.

8 MR. SHIFRIN: If we're searching
9 for the names of the institutions, you're going
10 to get calendar appointments, emails, and I know
11 Your Honor would like to explore what this
12 population looks like, but we've done this
13 already with two of the search terms and Ms.
14 Chaitman is on record for complaining about what
15 was in there.

16 Again, if there are going to be
17 additional -- I can't obviously state this
18 definitively, I could never say this
19 definitively, but if we're dealing with search
20 terms here, the documents that are amenable to
21 problems with search terms are the hard copy
22 documents. And we are prepared to give her all
23 of those, with the subset of that population of
24 documents that we have identified as potentially
25 of interest to Ms. Chaitman, without

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1 particular Madoff customer or that it should be
2 attributed at a minimum to a Madoff customer,
3 and there is no way that the two sides are going
4 to agree about that.

5 But part of your objection is that
6 these requests are overbroad, and what I was
7 trying to explore is whether we can test the
8 waters and see whether they are overbroad. So,
9 for example, picking Bear Stearns and giving Ms.
10 Chaitman all of the documents that are hits,
11 which is 653,000 documents, and if she can find
12 trading records that haven't been produced, that
13 would inform the discussion. If she can't, that
14 also would inform the discussion.

15 MS. CHAITMAN: I believe that
16 that's a good idea.

17 JUDGE MAAS: Let me hear from
18 counsel first for the Trustee.

19 MR. SHIFRIN: One thing that's
20 worth emphasizing here is that the account
21 numbers that we ran were account numbers for all
22 known BLMIS/Madoff banks. There were about a
23 hundred of them, give or take. So more than
24 just the names of the banks.

25 If we're running account numbers

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1 representing that they actually reflect real
2 trading activity, without representing anything
3 about them, simply in an effort to identify
4 documents that are arguably responsive to Ms.
5 Chaitman's request, and she can sort through it.

6 MS. CHAITMAN: May I just ask, are
7 you saying that you're going to give me all the
8 documents with hits including group in this
9 column?

10 MR. SHIFRIN: We will give you --
11 if we produce all of the scanned hard copy
12 documents --

13 MS. CHAITMAN: Is that this
14 column? I don't know the term, scanned hard
15 copy.

16 MR. SHIFRIN: That's the entire
17 BLMIS database. The scanned hard copy are a
18 subset of the entire BLMIS database.

19 MS. CHAITMAN: Right.

20 JUDGE MAAS: A fairly small subset
21 by comparison, right?

22 MR. SHIFRIN: Right, because ESI,
23 just by its nature, is enormous. I mean, we're
24 dealing with an enormous volume of data. One
25 million hard copy pieces of documents, and

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<p>1 that's not pages, by the way, that's every 2 scanned piece of paper, every piece of paper 3 recovered from an entire company from three 4 floors, 17th, 18th 19th floor, every piece of 5 document, every hard copy document coming from 6 every office, work space, et cetera. 7 So, to the extent there are 8 documents within that population, that one 9 million document population that would hit on 10 those search terms, they would be included, 11 absolutely. 12 MS. CHAITMAN: Let me just, if I 13 may, Your Honor, may I ask a question? 14 JUDGE MAAS: Yes. 15 MS. CHAITMAN: Let's assume that 16 there was someone in Madoff's offices who would 17 annually collect all third-party statements, 18 let's just assume that, and put them in a 19 warehouse in Queens. That would not be 20 encompassed in this, right? 21 MR. SHIFRIN: Anything that's 22 unprocessed and not in the BLMIS database, so an 23 unscanned box of documents, no, that wouldn't be 24 encompassed in this. 25 JUDGE MAAS: But you also have</p>	<p>1 pre-1992. 2 MR. SHIFRIN: Well, no, that 3 includes some post-'92 as well. Every microfilm 4 reel that we restored and processed, you have 5 all those documents. The only documents you 6 don't have are the reels that we did not restore 7 and did not process, but that dispute you raised 8 with Judge Bernstein and he gave you 9 instructions. 10 MS. CHAITMAN: Right. That's 11 about a thousand reels that haven't been 12 restored and processed. 13 MR. SHIFRIN: I don't have the 14 numbers before me, but something along those 15 lines. But there's no microfilm document that 16 Ms. Chaitman doesn't have. 17 JUDGE MAAS: When you say it was 18 raised with Judge Bernstein and he ruled, what 19 specifically did he rule? 20 MR. SHIFRIN: Again, this is a 21 part of how this dispute has been kind of 22 muddled. Ms. Chaitman, in our view, improperly 23 raised the microfilm issue before Judge 24 Bernstein in connection with some briefing 25 relating to the Madoff deposition. This was</p>
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<p>1 indices that the Trustee furnished, I think at 2 my direction, so that you could go through the 3 indices and say there may be something in box 4 63. 5 MR. SHIFRIN: And they're 6 substantive, too. 7 JUDGE MAAS: And I gather that 8 hasn't happened. 9 MR. SHIFRIN: Not once. And there 10 are descriptors in each line item that tell you 11 what's in the box. 12 JUDGE MAAS: And the Trustee 13 further went through that exercise -- correct me 14 if I'm wrong -- and found some microfiche that 15 potentially was responsive and restored all of 16 those. 17 MR. SHIFRIN: We restored all 18 pre-1992 microfilm reels because that's what she 19 was after at the time and we produced all 20 documents restored from those microfilm reels. 21 In fact, Ms. Chaitman now has all documents 22 contained and stored on every single microfilm 23 reel that the Trustee has restored. So there's 24 no -- 25 MS. CHAITMAN: But that's just the</p>	<p>1 approximately three months after Your Honor 2 entered the March 2017 order. 3 In that briefing she reiterated 4 her usual accusations that we're hiding trading 5 records. In our view she was improperly 6 circumventing Your Honor's March 2017 order. 7 That's what she did. 8 Now, for a variety of reasons, at 9 that first hearing it took -- Judge Bernstein 10 wasn't aware of the March 2017 order. We had a 11 subsequent hearing and one of the first things 12 that Judge Bernstein said at the subsequent 13 hearing was that part of the problem, and I'm 14 paraphrasing what he said, is that I learn 15 something new each time you guys come here. 16 What he was referring to was Your Honor's March 17 2017 order. 18 And on the basis of that order, he 19 didn't order anything but he suggested that Ms. 20 Chaitman identify a small number of reels. The 21 Trustee restored those reels, produced those 22 documents, and if Ms. Chaitman can identify 23 something in there that gives reason to suspect 24 there are additional documents of interest on 25 these other reels, she can make that showing.</p>